IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.512 OF 2004

P.G.Honrao .. .. .. Petitioner
v/s.
State of Maharashtra & ors. .. Respondents

W i t h

WRIT PETITION NO.1586 OF 2004

Shankar Rajaram Pisal. .. .. Petitioner
v/s.
State of Maharashtra & ors. .. .. Respondents

Mr.M.S.Topkar for petitioner

Mrs.S.S.Bhende, AGP for res.Nos.1 & 2.

Respondent No.3 is served.
(In both matters)

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 2nd August 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. In both these petitions, a notice was issued to the respondents that, if possible, both the petitions would be heard finally at the admission stage. A reply has been filed on behalf of the State Government. Respondent No.3 has been served, but no reply has been filed.

3. The petitioner in Writ Petition No.512 of

2004 is working as Board Secretary in a Sugar Co-operative whereas the petitioner in Writ Petition No.1586 of 2004 is working as Environmental Engineer. The petitions are filed by making a grievance that the two petitioners are not permitted to appear for the written test and later-on for the interview for the post of Managing Director. The post of Managing Director is available in various Sugar Co-operatives and respondent No.3 is the Federation of the State Co-operative Sugar Factories.

4. The petitions point out that all that is required is that the person concerned must be a Head of the Department. The departments which are to be considered are not specified. In the reply filed on behalf of the State Government by one Shri D.B.Gavit, Joint Secretary of Sugar, it is stated that there is some circular of 19th July 1983 wherein there is a reference to the appointment of key personnel in the Sugar Co-operatives. It is stated that neither the Environmental Engineer nor the Board Secretary is included in the list.

5. Mr.Topkar, learned Counsel appearing for the petitioners, points out that the circular will

not govern the present selection of Managing Director which was sought to be made in pursuance of the Notice dated 20th of September 2003.

6. In Writ Petition No.512 of 2004, a reliance is placed on the certificate given by the Sugar Factory that the post of Board Secretary is equivalent to Head of Department. That certificate is dated 24th November 2003 issued by Shree Pandurang S.S.K. Ltd.

7. Similarly in Writ Petition No.1586 of 2004, there is a certificate that the petitioner is working as Head of the Environment Department and the certificate is given by Shree Shankar Sahakari Sakhar Karkhana Limited.

8. Mr.Topkar has drawn our attention to the fact that many of the categories such as Head of the Law Department or Agricultural Officers or Safety Officers are not being considered. He has also drawn our attention to the candidates who appeared for the test and the interview and we find that good many of them have not even secured 35% of marks in the written test and yet on the basis of the interview, they have been placed in the list of selected candidates.

9. In our view, both the petitioners have made out a case of discrimination against respondent No.3 as well as respondent No.2. Respondent No.2 is the authority who is expected to hold the written test and then the interview. It is a public office and, therefore, no discrimination can be made against the persons who are otherwise Heads of Department and qualified. This will amount to violation of Article 14 of the Constitution of India.

10. In the circumstances, we allow both the petitions and direct respondent No.2-Commissioner for Sugar to hold a written test and thereafter an interview of the two petitioners as well as other persons who may be Heads of the Legal Department or the Safety Department as well as Agricultural Officers. They are also Heads of the concerned Departments and, therefore, they should as well be permitted to appear for the written test and interview. We further direct that if any such persons get selected after the written test and interview, they will be placed in the list of the selected candidates as per the marks secured by them and accordingly, given placement as the Managing Directors.

11. Both the petitions are allowed in the aforesaid terms.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)